



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Peter Van Voris et al.

Serial No.: 10/005,804

Filed: December 3, 2001

Title: BARRIER PREVENTING WOOD
PEST ACCESS TO WOODEN
STRUCTURES

Attorney Docket: 47309-
00031USP1

Group Art: 2681

Examiner: Neil S. Levy

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RESPONSE TO ELECTION/RESTRICTION REQUIREMENT AND
ACKNOWLEDGMENT OF INTERVIEW

Commissioner for Patents
Washington, DC 20231

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37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date below:

1-17-03
Date

Janet M. Garetto
Signature

Applicants would like to thank the Examiner for the courtesies which were extended to Applicants' attorney Janet M. Garetto during a telephonic interview held on January 14, 2003. During the interview, the Examiner clarified certain items set forth in the Office Action mailed December 18, 2002.

In response to the Office Action mailed December 18, 2002, Applicants elect to prosecute Group I, i.e., Claims 1-18, 20-52, and 57-76 in the present application. Applicants traverse the Examiner's placement of claims 54-56 into Group II as being "drawn to method of making." Claims 54-56, which recite a barrier film, are product-by-process claims and are properly analyzed as product claims rather than as method claims.

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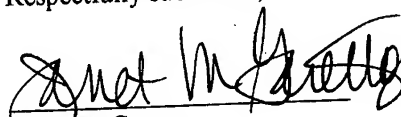
See M.P.E.P. 2113 ([E]) [even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself.]; M.P.E.P. 2173.05(p) ("A product-by-process claim . . . is a product claim that defines the claimed product in terms of the process by which it is made".)

Applicants understand from the telephone interview with the Examiner that claims 1-7, 9-18, 20-36, 39-52, 57-63, and 65-76 are considered generic. The Examiner has required Applicants to elect a single disclosed species for prosecution on the merits in the event that no generic claim is held allowable. Applicants elect lambda cyhalothrin and trichloronitromethane as preferred species. Claims which are readable on the elected species are claims 1-18, 20-41, 43-52, 57-62, and 64-76 from Group I, including claims 54-56 which Applicants believe are properly within Group I.

No fees are believed to be due in connection with the filing of this Response to Election/Restriction Requirement and Acknowledgment of Interview. However, should any fees be deemed necessary (except payment of the issue fee), the Commissioner is authorized to charge any deficiency or to credit any over payment to Jenkins & Gilchrist Account No. 10-0447/47309-00031USP1.

Date: January 17, 2003

Respectfully submitted,



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